

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 21ST DAY OF AUGUST 2018

THE HON'BLE MR.JUSTICE ANITHA SUMANTH

A.No.6125 of 2018

in

C.S.No.315 of 2014

C.S.No.315 of 2014

Dr.D.S.Manohar,
1K late Mr.D.Subbarayalu,
West Madha Kovil Street,
Royapuram, Chennai 600 013

...Plaintiff

Vs

D.S.Ramesh,
S/o.late Mr.Dubbarayalu,
Door No.521, T.H.Road,
First Floor, Old Washermanpet,
Chennai - 600 021.

...Defendant

A.No.6125 of 2018

D.S.Ramesh,
S/o.Late D.Subbarayalu,
521, T.H.Road, 1st Floor,
Old Washermanpet,
Chennai - 600 021.

सत्यमेव जयते

...Applicant/Defendant

Vs.

Dr.D.S.Manohar,
1K late Mr.D.Subbarayalu,
West Madha Kovil Street,
Royapuram, Chennai 600 013

..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to set aside the exparte preliminary decree dated 30.01.2017 passed in the above suit C.S.No.315 of 2014.

This application coming on this day before this court for hearing the court made the following order:

This Application is filed seeking to set aside an ex parte Preliminary Decree dated 30.01.2017 passed in C.S.No.315 of 2014.

2. The suit had been filed by the respondent in this Application praying for a Preliminary Decree for partition as well as a direction to the defendant to pay a sum of Rs.25,000/- (Seventy twenty five thousand only) per month towards rent till the date of delivery of possession and to pass a preliminary Decree for Partition in favour of plaintiff as well as various other prayers.

3. Summons was issued in the suit on 03.06.2014. Since the defendant failed to respond to the summons, he was set ex parte on 04.11.2016. Evidence was recorded and the suit was decreed ex parte on 30.01.2017.

4. The applicant in the present Application admits receipt of the suit summons on 03.06.2014 but states that he had been rendered immobile thereafter due to various medical exigencies. He states that he had undergone a surgery in the spinal cord followed by surgery for hernia and thereafter yet another surgery for the spinal cord between October 2010 and June 2011. He was therefore unable to take up appropriate action to contest the suit despite having received the suit summons.

5. It was only in November 2017 that he was in a position to meet his counsel and instructed her to file a written statement that came to be filed on 11th November 2017 along with an application to set aside the ex parte decree. There is thus, a delay of 258 days that has been occasioned in seeking to set aside the ex parte Preliminary Decree. The application for condonation of delay has been allowed by a learned judge of this court by his order dated 18.06.2018 upon condition that a sum of Rs.2,500 be paid as costs to the respondent counsel. The aforesaid condition has been complied with.

6. In the light of the order of this court condoning the delay of 258 days in filing the application to set aside ex parte order, the applicant relies upon a decision of this court in the case of *S.Nehru and others Vs. S.Sivasankar and others* (2015 (1) CTC 267). The preposition set out therein is that where common reasons have been adduced in Applications for condonation of delay as well as for setting aside of ex parte decree, the condonation of the delay will lead automatically to the allowing of the petition to set aside ex parte decree and restoration of the suit to file for hearing on merits.

7. According to her, since this court has condoned the delay in filing the Application seeking set aside of ex parte decree, the request for setting aside of ex parte

8. On merits, the applicant states that he had advanced certain monies to the respondent and as such the partition as ordered by this court on 30.01.2017 would not be a fair or a proper partition.

9. Stiff resistance is put up to the Application. The applicant was, according to the respondent, well aware of the proceedings throughout and the medical reasons set out in the application have not been substantiated at all. Thus, the respondent would urge that the present application be dismissed in limine.

10. Heard both learned counsels. Suffice it to say that the pleadings in the Application itself leave a lot to be desired. Though at paragraph 4, the applicant admits that he had been well aware of the *ex parte* decree that had been passed on 30.01.2017, the written statement as well as applications to condone delay and set aside *ex parte* decree have been filed only in November 2017. The elapse of time between January and November 2017 is unexplained.

11. Further, the sequence of events that have transpired indicate that the respondent has, prior to the institution of the suit, filed a reply dated 09.04.2014 to the legal notice received by him on 12.03.2014. He was hence, quite aware of the entire issue. The applicant also does not deny that he has received the suit summons.

<https://hcservices.ecourts.gov.in/hcservices/> In these circumstances, the only point to be considered is the impact of order dated 18.06.2018

condoning the delay in filing the application to set aside the ex parte decree in the present circumstances.

13. In the case of *S.Nehru and others* (supra), this court has, in considering a CRP filed challenging an order condoning delay of 842 days and setting aside an ex parte Decree in a similar situation as in the present case, held that when the explanations for the delay in filing application to set aside an ex parte decree as well as for seeking to set aside the ex parte Decree, were one and the same, the condonation of delay in filing the application would automatically lead to the setting aside of the ex parte Decree as well.

14. In the present case, the reasons adduced seeking condonation of delay of 258 days have been considered by this court and accepted vide order dated 18.06.2018. The aforesaid order has attained finality. The reasons seeking a set aside of the ex parte order are identical. In fact, the application is a common one setting out two separate prayers for the condonation of delay and setting aside of ex parte order. Though the respondent has filed a counter in respect of the application seeking condonation, no counter has been filed for the present application though learned counsel reiterates all the contentions raised in the counter to the application seeking condonation of delay.

<https://hcservices.ecourts.gov.in/hcservices> 15. In the aforesaid circumstances, I am of the view that this Court has already taken into consideration the

reasons adduced by the applicant for condonation of delay and found them acceptable and the same would have a bearing on the consideration of the present application. The reliance placed by the application on the decision of this Court in the case of *S.Nehru and others* (supra) is well founded.

16. In the light of my conclusion as above, this application is allowed. Let the suit be listed for framing of issues on 12.10.2018".

Sd/.A.S.M.J
21.08.2018

//Certified to be a true copy//

Dated this the 8th day of October 2018.

TE/08.10.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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